

**Editor's note: Reconsideration granted; decision vacated -- See Marion Stevens, 64 IBLA 69 (May 10, 1982)**

MARION STEVENS

IBLA 75-319

Decided January 12, 1976

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting Alaska Native allotment application F-13356, because of conflict with the Rampart Power Project withdrawal.

Affirmed.

1. Administrative Practice--Alaska: Native Allotments

Where a Native allotment application is properly rejected and on appeal the applicant first submits assertions which, if proved, might qualify her, but fails to make a showing explaining why the data was not timely filed, the rejection of the application will stand.

APPEARANCES: E. John Athens, Jr., Esq., of Alaska Legal Services Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Marion Stevens has appealed from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated September 13, 1974, rejecting her Alaska Native allotment application, filed pursuant to 43 U.S.C. §§ 270-1 through 270-3 (1970), because she had not initiated substantial use and occupancy of the land prior to its segregation engendered by the filing of the request on January 9, 1963, for the Rampart Canyon Power Project Withdrawal F-030632.

The Secretarial Directive of October 18, 1973, as supplemented on May 16, 1975, carries the following instructions:

Vacant, unappropriated and unreserved land in Alaska is available for allotment under the Native

Allotment Act. With respect to reserved or withdrawn land, if a Native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal or reservation, the withdrawal may be revoked and the allotment granted.

As examples of application of the above, note the following:

1. Where a Native has initiated and completed substantial use and occupancy of the land for five years prior to the withdrawal or reservation, the allotment may be granted even though the land is still withdrawn at the time of application.
2. Where a Native has not completed the five-year period of statutory use and occupancy of lands prior to the effective date of a withdrawal or reservation of the lands, the allotment application should be rejected.
3. When a Native has initiated use and occupancy of the land prior to the date of classification under the Act of September 19, 1964 (43 U.S.C. 1411-1418), such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, even though the classification encompassing the land is still in effect.

We previously discussed and applied this instruction in Katie Wassillie, 20 IBLA 330 (1975); Christian G. Anderson, 16 IBLA 56 (1974); and Georgianna Fischer, 15 IBLA 79 (1974). Under the principles set forth in those decisions, it was proper to reject appellant's application. See Anna Opheim, 20 IBLA 290 (1975); Herman Joseph, 21 IBLA 199 (1975); Hunt v. State of Utah, 59 I.D. 44 (1945).

Before issuing the decision rejecting the allotment application, the District Office advised appellant by notice dated May 8, 1974, that her application would be rejected unless she submitted additional evidence of her use and occupancy of the land prior to

January 8, 1958, the inception of the 5-year period prior to the closing of the land for the Rampart Canyon Power Project. The notice recited that the enrollment records of the Bureau of Indian Affairs list the birth date of Ms. Stevens as February 24, 1945, so that her age in January 1958 would have been less than 13 years. Her attention was invited to this Board's holding in Arthur C. Nelson, 15 IBLA 76, 78 (1974), "the substantial use and occupancy contemplated by the Native Allotment Act must be by the native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents." Ms. Stevens was allowed 60 days from the receipt of the notice within which to supplement the recitals of use and occupancy she theretofore had submitted. She made no response. Consequently, BLM issued its decision relying on the veracity of appellant's showing that her use and occupancy of the land commenced in 1963, after the date of the closing of the land for the Rampart Canyon Power Project.

[1] Appellant now asserts on appeal that, although she initiated use and occupancy "a long time before" 1958, she merely showed continued use for the 5-year period immediately preceding her application, i.e., commencing in 1964, because she "was just guessing." She also asserts on appeal that "I grew up there with my grandmother and first started using the land by myself in 1955." This bare assertion, unsupported by any evidence, is not convincing. Even if these assertions were considered to have evidentiary impact, they would not be entitled to favorable consideration as explained below.

On September 24, 1975, the Chief Administrative Judge of the Board of Land Appeals sent a letter to the Alaska Legal Services Corp., counsel of record in the case at bar, and which reads in part as follows:

5. Where new evidence has been submitted with the statements of reasons already filed, the Board hereby grants until November 3, 1975, or 60 days from the filing of the notice of appeal, whichever is longer, in which to explain why the evidence was not submitted to BLM prior to its decision. Any future offers of evidence must be accompanied by such a showing. In the absence of such showing, newly offered evidence will not be favorably considered by the Board.

Appellant has made no such showing and therefore her assertions in her appeal will not receive favorable consideration.

Appellant's request for a hearing is denied for the reason that it would be not appropriate in the circumstances set forth above.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision below is affirmed.

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Frederick Fishman  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

